

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. S-03/08-116  
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 Appeal of )

The petitioner appeals certain findings made by the Department for Children and Families (DCF), Family Services Division pertaining to its proposed revocation of the petitioner's foster home license. The Department has moved to dismiss the matter based on lack of subject matter jurisdiction and the petitioner's failure to comply with the Board's rules regarding time limits. The following discussion is based on the petitioner's written filings with the Board and on the Board's record in this matter.

On March 21, 2008, the Board received a fax from the petitioner that included a copy of letters and attachments dated March 5 and 6, 2008 addressed by the petitioner to the Commissioner of the Department for Children and Families. The letter dated March 5 begins with the following paragraph:

I wish to request a hearing on the revocation of my foster care license. At this time I no longer wish to have a license but do wish to request a hearing so that

I will be given the opportunity to submit evidence/testimony as to the following charges:

The letter goes on for several more pages describing and contesting certain events that apparently had led the Department to begin revocation proceedings against the petitioner. Included in several pages of attachments was a notice to the petitioner from the DCF Commissioner, dated February 20, 2008 listing several violations that had led the Department's licensing unit to "propose" revocation of the petitioner's foster home license. The letter advised the petitioner that she had until March 22, 2008 to request a Commissioner's review of the proposed action, and that if this was upheld the petitioner had a right to request a hearing before the Human Services Board.

The second letter from the petitioner in her fax to the Board, dated March 6, and also addressed to the Commissioner, concerns a "formal complaint" by the petitioner against two individuals who appear to be Department employees.

Upon receiving the petitioner's fax, the Board on March 24, 2008 sent the petitioner a notice scheduling the matter for a telephone status conference on May 13, 2008. The notice included instructions to contact the Board if the petitioner would not be available for the conference, and it

advised her that her appeal would be dismissed if she failed to participate. The notice also included a form to be returned to the Board by the petitioner regarding the issues in the case.

On March 31, 2008, the Department filed a Motion to Dismiss for lack of jurisdiction.<sup>1</sup>

The petitioner did not contact the Board or return the form that had been mailed to her on March 24.<sup>2</sup> On May 13, 2008, the appointed day of the status conference, there was no answer on the petitioner's phone when the hearing officer attempted to initiate the status conference at its appointed time.

On May 15, 2008 the Board sent the petitioner a letter advising her that she had 7 days in which to contact the Board and show good cause for failing to keep her scheduled appointment, and that her appeal would be dismissed if she did not do so. When the Board did not hear from the petitioner in that time it placed the matter on the agenda for its June 4, 2008 meeting to be dismissed.

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<sup>1</sup>The Department also moved to "seal" copies of documents the petitioner had included in her March 5 fax to the Board that the Department maintains violate the confidentiality of certain individuals named in those documents.

<sup>2</sup>The Board, which has a practice of logging all phone calls and messages, has no record of any contact by the petitioner in this time period.

On June 2, 2008 the petitioner called the Board asking that her case be reset and alleging that she had notified the Board earlier that she would be out of the country on the date of her scheduled status conference. The hearing officer set the matter for a telephone status conference on June 13, 2008 to consider the petitioner's request to reopen the matter. The Department filed a written opposition to reopening on June 6, 2008.

At the status conference on June 13 the petitioner advised the Board that she was in the process of getting an attorney to contest the dismissal of her claim. The hearing officer allowed the petitioner a final continuance for this purpose and continued the matter for a telephone conference on July 14, 2008. At that conference the petitioner advised the Board that she did not have an attorney, and that she had no further argument to make regarding the Department's pending motions.

ORDER

The petitioner's appeal is dismissed for failure to comply with the Board's rules, lack of subject matter jurisdiction, and lack of ripeness.

REASONS

Human Services Board Rule No. 14 provides:

Failure to appear. If neither the appellant nor his or her representative appears at the time and place noticed for the hearing, the clerk shall inquire by mail as to what caused the failure to appear. If no response to this inquiry is received by the agency or the hearing officer within 7 working days of the mailing thereof, or if no good cause is shown for the failure to appear, the board may dismiss the appeal at its next regular meeting.

In this case, despite several written notices and warnings, the petitioner failed to attend her scheduled status conference on May 13, 2008 and failed to respond in a timely manner to show "good cause" for that failure. Although the petitioner later claimed that she was out of the country in May, she has made no such claim for March, when she received her written notice. As noted above, there is no record that the petitioner had any contact with the Board in advance of her absence at the initial status conference. Thus, the petitioner's appeal in this matter is dismissed due to her failure to comply with the above rule.

Even if "good cause" for not participating in her status conference and being untimely in her request for a continuance could be found, the petitioner's initial appeal does not appear to state a grievance over which the Board has

jurisdiction. In her appeal letters to the Commissioner, which she then faxed to the Board, the petitioner stated that she did not wish to have a foster care license. 3 V.S.A. § 3091(a) provides:

An applicant for or a recipient of assistance, benefits, or social services from the department for children and families, the office of Vermont health access, and the department of disabilities, aging, and independent living, the department of mental health, or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action *affecting his or her receipt of assistance, benefits, or services, or license or license application*; or because the individual is aggrieved by agency policy *as it affects his or her situation*.

Emphasis added.

In this case, the petitioner's appeal letters indicate that her complaint concerns certain findings and job performance by Department employees. However, inasmuch as she does not contest the loss of her foster care license, the Board can offer her no relief in this regard.

Moreover, even if she does now contest the loss of her license, her initial appeal to the Board, which came before the Department had made a final decision to revoke her

license (i.e., a Commissioner's Review Hearing had not yet been requested or held), was premature.

For any or all of the above reasons, the petitioner's appeal is dismissed.

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